No. 13,107

IN THE

United States Court of Appeals

For the Ninth Circuit

BRUCE G. BARBER, District Director, Immigration and Naturalization Service,

Appellant,

vs.

LOPE M. VARLETA,

Appellee.

REPLY BRIEF FOR APPELLANT.

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Table of Authorities Cited

Statutes

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Counsel for appellee on page 7 of his brief states that it has been stipulated that the appellee *is* a lawful resident alien of the Hawaiian Islands by reason of his admission to that Territory prior to the Philippine Independence Act of 1934. (Emphasis supplied.)

The specific facts stipulated to by the Government was that appellee's entry as a stowaway in the Hawaiian Islands in the year 1931 was considered a lawful entry. No stipulation was entered into that appellee has a lawful permanent residence in the Hawaiian Islands at the present time. In fact, the appellant in his opening brief contended that appellee

abandoned any legal domicile he may have had in the Hawaiian Islands and asserts at this time that appellee has failed to maintain a lawful residence in the Islands of Hawaii.

Appellee concedes and the Court below held that between the effective date of the Philippine Independence Act and July 4, 1946, Filipino citizens who had been admitted only to Hawaii were subject to the provisions of Section 8(a)(2) of the Act of 1934. Appellee's illegal entry to Continental United States on April 6, 1935, being not in accordance with the aforesaid provisions of the Act of 1934, it cannot be said that appellee has a legal residence in the Continental United States.

Appellee makes much of the point that if he were otherwise qualified, he would be eligible for naturalization.

Counsel for appellee on page 14 of his brief then makes the following erroneous assumption that:

> "If a person has an admission to the United States, which is valid for naturalization, which is a privilege and not a right, he must also have a valid admission to the United States for immigration purposes."

As stated in its opening brief, the Government has shown that the statutes covering naturalization are separate and apart from those statutes regulating immigration. There are several classes of persons who might be deportable on immigration charges but because of specific statutes regulating their naturaliza-

tion may at the same time be found eligible for naturalization.

A case analogous to the contentions made by appellee is that of a former United States citizen woman who lost such citizenship by virtue of her marriage to an alien prior to September 22, 1922 who then took up residence abroad. In such case, the woman might enter the United States illegally or contrary to immigration laws and be subject to deportation, but because of the specific nationality statute, which is not concerned with the manner or place of entry, the woman could, notwithstanding her deportability, be naturalized. Similar Congressional acts relating to naturalization, in the past have made it possible for members of the Armed Forces of the United States and Seamen to become naturalized citizens of the United States notwithstanding that they were, at the same time, deportable for violation of immigration laws. In so far as Filipino persons are concerned, Congress has passed a statute (Section 321(a) of the Nationality Act of 1940) regulating their nationality which reads as follows:

> "Certificates of arrival or declarations of intention shall not be required of Filipino persons or persons of Filipino descent who are citizens of the Commonwealth of the Philippines on the date of the enactment of this Section, and who entered the United States prior to May 1, 1934, and have since continuously resided in the United States. The term 'Filipino persons or persons of Filipino descent' as used in this Act shall mean persons of a race indigenous to the Philippine

> Islands and shall not include persons who are of as much as one-half of a race ineligible to citizenship."

It may thus be seen that as in the categories mentioned supra, Congress was not concerned with the *entry* of persons embraced within the statute, and a person of Filipino citzenship may be naturalized notwithstanding that he too may be subject to deportation.

One must, therefore, logically conclude that although a person may be eligible for naturalization, it does not necessarily mean that he had a valid admission to the United States for immigration purposes.

Wherefore, appellant prays that the order of the District Court be reversed and that appellee be remanded to the custody of the Immigration and Naturalization Service.

Dated, San Francisco, California,
January 2, 1952.

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